



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2021-0404; FRL-8740-01-OGC]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with the Clean Air Act, as amended (“CAA” or the “Act”), the United States Environmental Protection Agency (“EPA”) gives notice of a proposed consent decree in *Environmental Integrity Project v. Regan*, No. 1:21-cv-00009 (D. D.C.). In this litigation, Environmental Integrity Project (“EIP”) alleged that the Administrator of EPA failed to perform certain non-discretionary duties to timely respond to petitions asking EPA to object to eight operating permits issued by the Texas Commission on Environmental Quality (“TCEQ”). The proposed consent decree would establish deadlines for EPA to take action in response to these petitions. The proposed consent decree does not require EPA to take any specific, particular action in response to the petitions.

**DATES:** Written comments on the proposed consent decree must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2021-0404, online at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION**

section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19. **FOR FURTHER INFORMATION CONTACT:** Charles Starrs, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-1996; email address: [starrs.charles@epa.gov](mailto:starrs.charles@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Obtaining a Copy of the Proposed Consent Decree**

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2021-0404) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

### **II. Additional Information about the Proposed Consent Decree.**

The proposed consent decree would fully resolve a lawsuit filed by EIP, Sierra Club, Port Arthur Community Action Network, Environment Texas, and Neta Rhyne (the “Plaintiffs”) seeking to compel the Administrator to take action, in accordance with CAA section 505(b)(2), 42 USC 7661d(b)(2), to respond to eight petitions. The lawsuit, *Environmental Integrity Project v. Regan*, No. 1:21-cv-00009, was filed in the United States District Court for the District of Columbia on January 4, 2021.

In this action, the Plaintiffs allege that TCEQ issued, at various times under Title V of the CAA (42 U.S.C. 7661-7661f), operating permits to eight facilities located in Texas: the ETC Texas Pipeline Ltd.’s Waha Gas Plant (located in Pecos County); Premcor Refining Group Inc.’s Port Arthur Refinery (located in Jefferson County); Sandy Creek Services, LLC’s Sandy Creek Energy Station (located in McLennan County); Phillips 66’s Borger Refinery (located in Hutchinson County); Kinder Morgan Crude & Condensate LLC’s Galena Park Facility (located in Galena Park, Harris County); Oak Grove Management Company’s Oak Grove Steam Electric (located in Robertson County); BP Amoco Chemical Company’s Texas City Chemical Plant (located in Galveston County); and Blanchard Refining Company LLC’s Galveston Bay Refinery (located in Galveston County). The Plaintiffs also allege that they submitted to EPA petitions asking EPA to object to the eight operating permits issued by TCEQ and that EPA has failed to meet its nondiscretionary duty to timely respond to those petitions.

Under the terms of the proposed consent decree, EPA shall, in accordance with a stated schedule, sign responses to the eight petitions at issue in the litigation. The schedule requires EPA to sign responses to: three of the eight petitions by August 31, 2021; an additional one of the petitions by September 30, 2021; an additional one of the petitions by October 31, 2021; an additional one of the petitions by November 30, 2021; an additional one of the petitions by December 31, 2021; and an additional one of the petitions by January 31, 2022. In accordance with that schedule, EPA will respond to all the petitions not later than January 31, 2022. EPA retains discretion to determine the order of its petition responses or which petition response is

made by which date. Although the proposed consent decree requires EPA action in accordance with a schedule, it does not dictate the substance or specific nature of EPA's responses to the petitions. The proposed consent decree also requires that, as EPA responds to the petitions, EPA shall send notice of the response to the Office of the Federal Register for publication in the Federal Register. See the proposed consent decree in the docket for other terms and conditions.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

### **III. Additional Information about Commenting on the Proposed Consent Decree.**

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2021-0404, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written

comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

**Gautam Srinivasan,**  
*Associate General Counsel.*

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